



October 15, 2021

Mr. Brent Fields, Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

RE: Proposed Rule Change to List and Trade Shares of the VanEck Bitcoin Trust
(File Number SR-CboeBZX-2021-019 Amendment No. 2)

Dear Mr. Fields,

Gemini Trust Company, LLC (“Gemini”) is submitting this letter to the Securities and Exchange Commission (the “Commission”) to express its support for the proposal to list and trade shares of the VanEck Bitcoin Trust (the “VanEck ETF” and the proposal, the “ETF Proposal”) on the Cboe BZX Exchange, Inc. (the “Exchange”).

As the Commission may be aware, the VanEck ETF has selected Gemini to act as its proposed bitcoin custodian. By way of background, Gemini is a licensed New York trust company with extensive experience safeguarding digital assets to meet our customers’ security needs in a compliant manner subject to robust regulatory oversight. Gemini also has experience providing digital asset custody services and related operational support to digital-asset backed exchange-traded products (“ETPs”), primarily as the digital asset custodian for bitcoin and ethereum ETPs listed on Canadian exchanges. We believe that the VanEck ETF and the Exchange, in partnership with Gemini, are well-positioned to operate an ETP safely and efficiently and make it available to U.S. customers, all under the oversight of the Commission.

Gemini is dedicated to the secure and compliant growth of the digital asset ecosystem. By partnering in the VanEck ETF, we want to ensure the Commission and U.S. investors that their digital assets will be secure to the highest level of certainty. Gemini has operated as a regulated digital asset custodian and digital asset exchange since 2015 and has been an important participant and contributor in the evolution of the markets for digital assets. Bitcoin now has secure and reliable infrastructure, robust regulatory oversight, and a deep, liquid market.

As the bitcoin market has evolved so too has demand among market participants to gain exposure to bitcoin through a traditional, regulated ETP. As mentioned, Gemini is a custodian for

several ETPs currently listed on Canadian exchanges, which represent billions of dollars of holdings. We believe there is comparable interest for exposure to bitcoin in the United States.

We believe the ETF Proposal is a responsible approach to meet this demand in a way that offers greater customer protection and transparency than existing alternatives for retail customers to gain proxy exposure to bitcoin. As the custodian, Gemini will ensure that the VanEck ETF's bitcoin assets are stored in its proprietary offline storage system, providing the highest level of security and comfort to the Commission and customers.

We also support the arguments put forth by the Exchange addressing the Commission's historical concerns about the market for bitcoin, especially related to price manipulation. We believe certain of the Commission's concerns have been mitigated by the growth of the overall bitcoin market¹ and related growth of regulated bitcoin derivatives.² These factors demonstrate that the depth of the market prevents manipulation of the price of bitcoin in a manner that could affect the share price of an ETP.

A further factor in support of the ETF Proposal is the choice of a robust benchmark rate that includes a composite of bitcoin prices from underlying exchanges, including the spot price of bitcoin on the Gemini exchange. Gemini and other regulated digital asset exchanges and custodians have a history of operations in compliance with a regulatory framework developed specifically to address activities in digital assets. Among other things, this includes compliance with guidance put forth by the New York Department of Financial Services ("NYDFS") to implement "measures designed to effectively detect, prevent, and respond to fraud, attempted fraud, and similar wrongdoing."³ Gemini meets this obligation through automated systems and robust internal controls and surveillance. The growing sophistication of market surveillance tools and strategies in the market for bitcoin as well as the growing proportion of bitcoin activity occurring on regulated exchanges is a key development to mollify concerns about price manipulation or other manipulative practices in the bitcoin market.

We believe that bitcoin market conditions have improved and matured since the Commission last opined on an ETP proposal. There is now substantial volume of trading activity occurring on well-regulated U.S. exchanges with robust market surveillance capabilities, and investors would best be served and protected by the Commission providing a viable, regulated path to retail participation.

In the remainder of this letter, Gemini provides additional information and background on its approach to security, custody and compliance, to provide further assurance to the Commission about the operations of the VanEck ETF.

¹ See CBOE 19b-4, p. 28-33.

² See CBOE 19b-4, p. 24-32; 49-52.

³ See NYDFS, "Guidance on Prevention of Market Manipulation and Other Wrongful Activity." February 7, 2018.

Gemini will Custody the VanEck ETF's Bitcoin in a Secure and Compliant Manner

In this part of the letter Gemini seeks to provide additional information about its operations and approach to digital asset custody.

Gemini was founded with a “security-first” mentality, and ethos of asking for permission, not forgiveness. We have built our business on a foundation of regulatory compliance, and we believe that investor protection is paramount to the continued evolution and maturity of the cryptocurrency asset class.

Gemini is a New York trust company regulated by the NYDFS. Gemini is also registered with FinCEN as a money service business and maintains money transmitter licenses (or the statutory equivalent) in all states where this is required. We are subject to capital reserve requirements, cybersecurity requirements, and banking compliance standards set forth by the NYDFS and the New York Banking Law. Gemini’s exchange and custody operations are subject to the supervision and oversight of the NYDFS and has similar regulatory obligations to that of a New York State chartered bank. As one of the original regulatory bodies to supervise digital asset activities, the NYDFS has developed technical expertise tailored to digital asset activity. Gemini undergoes holistic examination (e.g., annual bank-like examinations) and complies with obligations related to, among other things, capitalization, AML, and comprehensive cybersecurity oversight.⁴

Gemini makes available to customers different solutions for custody of digital assets. The VanEck ETF will rely on Gemini’s segregated custody product, referred to as Gemini Custody™. The Gemini Custody product is catered towards institutional customers that are seeking to store their digital assets in separate and dedicated custodial accounts. In a Gemini Custody account, the VanEck ETF’s bitcoin will be custodied using a unique blockchain address and not commingled with the digital assets of other customers or Gemini’s own digital assets. In this structure, all of the VanEck ETF’s digital assets will be held in offline “cold storage” in Hardware Security Modules (“HSMs”), purpose-built devices to store cryptographic material, that have achieved the highest-possible level of certification by the Federal Information Processing Standards. We also employ a multi-signature system which requires a quorum of unique private key signatures before transactions can be effectuated on the blockchain, which has the goal of eliminating single points of failure and this approach to custody provides allows for constant monitoring and auditability of the VanEck ETF’s holdings.

As an additional layer of protection for the VanEck ETF’s bitcoin assets, Gemini has geographically distributed facilities for storage purposes. Gemini also maintains digital asset insurance employs security best practices to ensure that our services are secured and constantly being updated to best protect against any vulnerabilities.

Gemini is regularly audited by major financial and audit firms and has achieved the SOC 1 Type II and SOC 2 Type II certifications for our custody product. These certifications serve as additional

⁴ See NYDFS Cybersecurity Requirements, Part 500, which includes, among other things, requirements for governance including a chief information security officer, penetration testing and vulnerability assessments, audit, application security, cybersecurity personnel and intelligence, multi-factor authentication, training and monitoring, encryption of non-public information, incident response plan, and data breach notification.

independent third-party verification that Gemini's operations and security compliance structures meet the most robust of industry standards.

We believe our approach to custody, security and compliance should mitigate any Commission concerns about the operation of the VanEck ETF or security around digital asset collateral.

Conclusion

We thank the Commission for considering this letter of support for the VanEck ETF and Proposal. We of course agree with the Commission that investor protection is paramount to the continued evolution and growth of the digital asset markets. We respectfully submit that the current underlying bitcoin market solves for many of the Commission's historical concerns, and that the time is ripe for the United States to continue to lead innovation by allowing for retail investor friendly, investor protection focused, and well-regulated exchange traded vehicles such as the VanEck ETF.